Filed 8/23/19 In re R.L. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re R.L., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. S.T., Defendant and Appellant.	E072615 (Super.Ct.No. J275762) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, and Jamila Bayati, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant, S.T. (Mother), is the mother of R.L., a boy born in April 2018. Mother appeals from the April 15, 2019, judgment terminating parental rights and selecting adoption as R.L.'s permanency plan. (Welf. & Inst. Code, § 366.26.)[1] Mother claims the April 15 orders must be reversed for two reasons: (1) the juvenile court erroneously refused to allow Mother to testify at the section 366.26 hearing that she would "prefer" R.L. be placed with relatives in Texas, namely, J.S. and P.S., who were still being assessed for placement pursuant to the Interstate Compact on the Placement of Children (ICPC) (Fam. Code, § 7900 et seq.); and (2) insufficient evidence supports the court's finding that R.L. was adoptable. We find these claims without merit and affirm the judgment.

II. FACTS AND PROCEDURAL BACKGROUND

A. *R.L.'s Initial Detention, Jurisdiction, and Disposition*

Several days after he was born, R.L. was taken into protective custody pursuant to a detention warrant. The home that R.L. was living in with Mother and his father, V.L.,[2] was unsafe and unsanitary—piles of trash and debris were found all over the home, and it smelled of rotting trash and dirty clothes. Mother admitted using marijuana during her pregnancy with R.L., but she and R.L. tested negative for controlled substances when R.L. was born.

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

[2] V.L. is not a party to this appeal.

Mother and V.L. have six older children (R.L.'s full siblings), who were detained in August 2016 following a domestic violence incident between the parents. At that time, too, the parents' home was "found in deplorable condition with piles of dirty laundry and trash . . . ." The older children were declared dependents and removed from the parents' custody. V.L.'s reunification services for the older children were terminated in May 2017, and Mother's were terminated in November 2017.

When R.L. was detained in April 2018, the older children were living with their paternal grandparents (the PGP's) under a permanency plan. The PGP's did not seek placement of R.L.; they reported they might not be able handle a newborn, given their age and responsibility for the older children. Other relatives in Utah, Nevada, and Texas were identified for potential placement of R.L.

At the jurisdictional hearing in July 2018, the court found R.L. was a child described in section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling), and declared R.L. a dependent. At the dispositional hearing in August 2018, the court ordered R.L. removed from parental custody and bypassed (denied) reunification services for Mother and V.L. (§ 361.5, subd. (b)(10.)[3] The court ordered R.L. maintained in his confidential foster home with Mr. and Mrs. M., but authorized plaintiff and respondent, San Bernardino County Children and Family Services (CFS), to place R.L. with relatives in either Utah or Texas, upon "ICPC approval."

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[3] The court found that the parents had failed to reunify with their older children; their reunification services for the older children had been terminated; and they did not subsequently make a reasonable effort to treat the problems that led to the removal of the older children. (§ 361.5, subd. (b)(10).)

B. *The Section 366.26 Reports and Hearing*

1. The Section 366.26 Reports

The section 366.26 hearing was originally set on December 10, 2018, but was continued to February 25, 2019, then to April 15, 2019. In its section 366.26 report, filed November 29, 2018, CFS reported that R.L., then age seven months, was developmentally "on track," had been living with his foster parents since April 2018, and was bonded to his foster family. The six older children were still living with the PGP's.

As of November 29, 2018, R.L.'s paternal Texas relatives, J.S. and P.S., were the only relatives who were still seeking R.L.'s placement, and they were also seeking placement of *one* of R.L.'s older siblings, D. J.S. and P.S.'s ICPC approval was still pending, but CFS reported it was "unlikely" that D. would be placed with J.S. and P.S., given that "the goal" was to keep D. with three of D.'s siblings, if possible. CFS also reported that R.L. *had never had any contact with J.S. or P.S.*, and it was "more than likely" that R.L. would be adopted by his foster parents, Mr. and Mrs. M. In an addendum report, filed February 20, 2019, CFS recommended termination of parental rights and adoption as R.L.'s permanency plan. CFS reported that R.L. "is appropriate to be adopted due to his young age and [his foster parents'] desire and willingness" to adopt him.

2. The Section 366.26 Hearing

At the section 366.26 hearing on April 15, 2019, the court admitted into evidence CFS's section 366.26 report and addendum report, and county counsel advised the court

that CFS was recommending terminating parental rights and would be submitting the matter to the court based on the reports and its recommendation. Mother's counsel objected to terminating parental rights, then called Mother "for some brief testimony."

After asking Mother whether she was aware of CFS's recommendation, counsel asked Mother about her visits with R.L., their frequency, why Mother had missed some visits, what Mother and R.L. did during the visits, and how R.L. responded to Mother during and at the end of the visits. R.L. always seemed happy to see Mother. Mother's counsel then told Mother that R.L. was placed with a foster family and asked Mother: "Is there some family member of yours that you would prefer [R.L.] to be placed with?" County counsel objected on relevance grounds, and the court sustained the objection. Without contesting the objection or making an offer of proof as to why any relative placement evidence was admissible, Mother's counsel next asked Mother what permanency placement she would prefer as an alternative to adoption. Mother responded that she wanted R.L. returned to her care, and that she preferred a legal guardianship over adoption. Minor's counsel elicited from Mother that her visits had always been supervised. That concluded Mother's testimony and her affirmative evidentiary showing.

The matter then proceeded to argument. County counsel argued that no exception to the adoption preference applied. County counsel argued: "Mother is describing having some level of a bond with this one-year-old child," but Mother had only monthly, supervised visits, and her bond did not "rise to the level of that of taking on a parental

role . . . which is required . . . to support any parental bond exception, which appears to be what the mother is proposing to do today."

County counsel also pointed out that there was "no evidence contrary to a finding that the child is adoptable, both specifically and generally . . . ." V.L.'s counsel briefly asked the court to select a "lesser" permanency plan than adoption, "such as guardianship," but did not identify who should be R.L.'s legal guardian. Mother's counsel joined this argument, emphasizing that R.L. was barely one year old and "seem[ed]" to recognize Mother as "some kind of a consistent in his life."

Minor's counsel joined county counsel in recommending termination of parental rights and adoption. Minor's counsel added that R.L. had been with his foster parents for nearly his entire life, and his foster parents had "taken on the parental role on a day-to-day basis." Minor's counsel argued that the parental benefit exception (§ 366.26, subd. (c)(1)(B)(i)) did not apply, and it was in R.L.'s best interest to be adopted because he was "both specifically and generally adoptable."

At the conclusion of the section 366.26 hearing, the court expressly found, based on clear and convincing evidence, that R.L. was both "generally and specifically adoptable." The court also found that, although Mother had regularly visited R.L., she did not meet her burden of showing that the second prong of the parental benefit exception applied. That is, Mother did not show that she occupied a parental role in R.L.'s life. Thus, the court terminated parental rights and selected adoption as R.L.'s permanency plan. Mother appealed.

III. DISCUSSION

A. *Mother's Proffered Testimony Concerning Her Preference for a Relative Placement Was Properly Excluded at the Section 366.26 Hearing*

Mother first claims the judgment terminating parental rights must be reversed because the court erroneously refused to allow Mother to testify at the section 366.26 hearing "about the prospect of [R.L.] being placed with a relative." As described *ante*, in the context of asking Mother about her visits with R.L., Mother's counsel asked Mother: "Is there some family member of yours that you would prefer [R.L.] to be placed with?" County counsel objected on relevance grounds, and the court sustained the objection. Mother made no offer of proof as to why her proffered testimony about her preference that R.L. be placed with a family member was relevant to her claim that parental rights to R.L. should not be terminated, and that the court should select a permanency plan other than adoption, such as a legal guardianship, that did not entail termination of parental rights.

Nonetheless, Mother now argues in this appeal that her testimony concerning her relative placement preference should have been admitted because "such family members were still being assessed." Mother is referring to R.L.'s paternal Texas relatives, J.S. and P.S., whose ICPC approval for the placement of R.L., and his sibling, D., was still pending on November 29, 2018. Mother argues: "To be clear, Mother appeals the [evidentiary] ruling that prevented her from expressing her wishes, pursuant to section 361.3, about her son being placed with a relative." Mother maintains that her "challenge

concerning her son's placement is a challenge that advances her argument against terminating her parental rights." We disagree.

As CFS argues, Mother has no standing to challenge CFS's failure to place R.L. with J.S. and P.S., or with any other relative. "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parents' argument against terminating parental rights." (*In re K.C.* (2011) 52 Cal.4th 231, 238.) At the section 366.26 hearing, Mother's only argument against terminating parental rights was that the parental benefit exception to the statutory preference for adoption applied. (§ 366.26, subd. (c)(1)(B)(i).) But, Mother did not show or offer to show that R.L.'s potential placement with J.S. and P.S., or with any other relative, had any bearing on whether the parental benefit exception applied and, thus, whether the court should have selected a permanency plan other than adoption, such as legal guardianship, that did not entail terminating parental rights. (See § 366.26, subd. (b).)

Additionally, the question of whether R.L. should have been placed with J.S. and P.S., or with any other relative, was not before the court at the section 366.26 hearing. Thus, J.S. and P.S. also lack standing to challenge the section 366.26 orders.[4] (Cf. *In re Isabella G.* (2016) 246 Cal.App.4th 708, 712, 723 [when a relative seeks placement after the dispositional hearing, and the social services agency did not timely complete a relative home assessment as required by law, the relative placement preference of § 361.3

[4] On June 17, 2019, this court dismissed J.S. and P.S.'s appeal from the judgment on the ground they had no standing to appeal.

applies even if no new placement is required]; see *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032-1033 [relative placement preference applies after termination of reunification services].) J.S. and P.S. never appeared in these proceedings, and the record also does not indicate whether they pursued ICPC approval for R.L.'s placement after November 29, 2018, when CFS reported that their ICPC approval was still pending. Nor does the record indicate that CFS did not do all that it could have done or was asked to do in order to obtain ICPC approval for J.S. and P.S.

Thus, on this record, the court properly excluded Mother's proffered testimony about her preference that R.L. be placed with family members, including J.S. and P.S., because the testimony was not relevant to whether the court should terminate parental rights and select adoption as R.L.'s permanency plan. For the same reasons, Mother's claim that the court violated her procedural due process rights in excluding her testimony also fails. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816-817 [the due process right to present evidence is limited to relevant evidence of significant probative value].)

B. *Substantial Evidence Supports the Court's Adoptability Finding*

Mother next claims the judgment must be reversed because insufficient evidence supports the court's finding that R.L. was adoptable. We disagree.

"A juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citation.] The 'likely to be adopted' standard is a low threshold. [Citation.] On review, '"we determine whether the record contains substantial evidence from which a reasonable

trier of fact could find clear and convincing evidence that [the child] was likely to be adopted . . . ."'" (*In re J.W.* (2018) 26 Cal.App.5th 263, 266-267; see § 366.26, subd. (c)(1).)

Here, the juvenile court found that R.L. was both generally and specifically adoptable. As Mother concedes, an adoptability finding may be supported by evidence that the child is generally adoptable—that is, that the child is adoptable regardless of whether there is a prospective adoptive family waiting to adopt the child. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.) "The question of [general] adoptability usually focuses on whether the child's age, physical condition and emotional health make it difficult to find a person willing to adopt that child." (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589; see *In re R.C.* (2008) 169 Cal.App.4th 486, 492 [child was generally adoptable based on his positive characteristics and development into a "beautiful, happy and healthy baby"].) If the child is generally adoptable, we do not examine the suitability of the prospective adoptive home. (*In re Michael G.*, *supra*, at p. 589.)

Ample substantial evidence—clear and convincing evidence—supports the court's finding that R.L. was generally adoptable. He was only one year old, developmentally on track, and bonded to his foster family. There were no concerns about his physical condition or emotional health, which may have made it difficult to find a person or a family willing to adopt him. Thus, the clear and convincing evidence shows, and the

court reasonably and implicitly determined, that R.L. was generally adoptable and likely to be adopted within a reasonable time.

Mother maintains that R.L.'s "young age and developmental progress are general attributes that do not sufficiently support an adoptability finding." Mother asserts that "aside from those attributes the baby's adoptability turns on his caretakers' willingness to adopt him." But, the juvenile court did not find that R.L. was only specifically adoptable or adoptable based solely on Mr. and Mrs. M.'s willingness to adopt him. Instead, the court found, and substantial evidence shows, that R.L. was generally adoptable based on his positive characteristics and specifically adoptable based on Mr. and Mrs. M.'s willingness to adopt him.

Mother correctly points out that when a child is only deemed specifically adoptable—the child is adoptable based solely on a particular caretaker's willingness to adopt him—the court must determine whether there is a legal impediment to the particular caretaker's ability to adopt the child. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1232.) And here, Mother claims R.L. was not specifically adoptable by Mr. and Mrs. M. because Mr. M. had not produced a judgment or divorce decree showing that his prior marriage had been dissolved. In its section 366.26 addendum report, CFS noted that Mr. M. had to provide a copy of his divorce decree before he and Mrs. M. could "finalize" their adoption of R.L.

Mother claims Mr. M.'s missing divorce decree is an impediment to R.L.'s specific adoptability by Mr. and Mrs. M. (*In re B.D.*, *supra*, 159 Cal.App.4th at pp.

1233-1234 & fn. 6 [legal impediment to adoption where only family interested in adopting sibling group did not have foster care license, and the family's home had not been preliminarily assessed].) Again, however, the court here did not find that R.L. was only specifically adoptable. The court found, and substantial evidence shows, that R.L. was generally adoptable. Thus, even if Mr. M.'s missing divorce decree is a legal impediment to R.L.'s adoption by Mr. and Mrs. M., and even if insufficient evidence supports the court's finding that R.L. was specifically adoptable by Mr. and Mrs. M.—the judgment terminating parental rights must be affirmed because substantial evidence supports the court's finding that R.L. was generally adoptable.

IV. DISPOSITION

The April 15, 2019, section 366.26 orders and judgment terminating parental rights and selecting adoption as R.L.'s permanent plan are affirmed.

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FIELDS
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.